

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application     )     Application No. P-0009  
of Aquila, Inc., Omaha,             )  
Nebraska, seeking resolution of     )  
a dispute under Nebraska Revised     )     ORDER  
Statute Section 57-1306.             )  
  )  
  )     Entered: February 23, 2005

BY THE COMMISSION:

On August 10, 2004, Aquila, Inc. (Aquila) filed an application with the Nebraska Public Service Commission (the Commission). In its application, Aquila requests that the Commission enter an order, pursuant to Neb. Rev. Stat. §§ 57-1301 to 57-1307 (2000 Supp.) and Title 291, Chapter 9 of the Nebraska Public Service Commission Pipeline Common Carriers Rules and Regulations, declaring that the Metropolitan Utilities District's (MUD) proposed natural gas main extensions to serve the planned Palisades subdivision (Palisades), are in violation of Neb. Rev. Stat. §§ 57-1301 *et seq.*, and that MUD must cease and desist extension of the proposed natural gas mains. Notice of the application was sent to MUD via certified mail on August 13, 2004.

On August 30, 2004, MUD filed its Answer to Aquila's Complaint and Affirmative Defenses. In its Answer, MUD asserted that its proposed main extensions to serve Palisades are in the public interest pursuant to Neb. Rev. Stat. §§ 57-1301 *et seq.* At the request of the parties, hearing on this matter was held jointly with the hearing in Docket No. P-0008. The hearing took place in Sarpy County on December 20, 2004.

E V I D E N C E

The parties stipulated to several facts related to this matter. Additionally, Kevin Jarosz, operations manager, testified on behalf of Aquila. The following individuals testified on behalf of MUD, Tim Young, developer for the Stonecrest subdivision; Scott Keep, senior vice president for operations; and Denise Dolezal, senior gas design engineer.

MUD is a municipal corporation and a political subdivision of Nebraska and operates as a natural gas and water utility in eastern Nebraska. Aquila operates as a natural gas utility in the eastern one-third of Nebraska. Both Aquila and MUD serve parts of Sarpy County. Aquila has a franchise agreement to provide natural gas service within the city limits of the City of La Vista and the City of Gretna. MUD's statutory boundary

extends into Sarpy County and currently includes portions of Giles Road including that between 164th Street and 168th Street.

Palisades is located between 168th and 175th Streets north of Cornhusker Road in Sarpy County. The Stonecrest/Meridian Park subdivision, which is the subject of Application No. P-0008, is located between 156th and 168th Streets just south of Giles Road and to the northeast of Palisades.

On June 29, 2004, a representative of Boyer-Young, the developer of Palisades, contacted MUD and requested that MUD provide natural gas service to the development. On June 30, 2004, the project engineer representing the developer submitted an application for natural gas service to MUD. On August 4, 2004, the MUD Board approved natural gas main extensions to serve Palisades.

Aquila has existing natural gas main in 168th Street abutting a portion of the east side of Palisades, serves the development in the northeast corner of 168th Street and Cornhusker Road, has natural gas main in Cornhusker Road abutting the south side of Palisades, and has natural gas main in 175th Street to the west of a portion of the development.

MUD has existing natural gas infrastructure serving the Millard Park South development in the northeast corner of Giles Road and 168th Street.

Kevin Jarosz testified that MUD service to Palisades would result in duplicative piping along 168th north of Cornhusker Road and along Cornhusker Road west of 168th Street.<sup>1</sup> Ms. Dolezal testified that MUD will not be duplicating mains along Cornhusker.<sup>2</sup> Mr. Jarosz testified, relying on a letter from Rod Buethe from Gretna Volunteer Fire and Rescue<sup>3</sup>, that redundancy in systems in close proximity to one another can cause confusion and delays in emergency response to gas leaks.

Ms. Dolezal testified that rather than installing additional mains along 168th Street south of Giles to serve Palisades, MUD could increase the diameter of its main into and through Stonecrest off of Giles Road and serve Palisades from Stonecrest. She indicated that this approach would eliminate the need for any mains along 168th Street and would be a lower

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<sup>1</sup> Mr. Jarosz indicated the areas of duplicative piping on Exhibit 70 in yellow.

<sup>2</sup> P-0009 Transcript (162:1-8).

<sup>3</sup> The letter from Mr. Buethe was admitted into evidence as Exhibit 63.

net cost to ratepayers. However, this approach would be a deviation from standard MUD design to run lines along major section line roads.<sup>4</sup>

Mr. Keep testified that some level of duplication is necessary within MUD's system in order to provide reliability of service. Mr. Keep further testified that either MUD service or Aquila service to Palisades represented orderly development, as it is simply incremental growth of their system. However, Mr. Keep testified that if MUD was not proposing to serve the Stonecrest subdivision located northeast of Palisades, that MUD would not have pursued serving Palisades. More specifically, Mr. Keep testified: "Without Stonecrest, I don't know if we would have looked very hard at Palisades..."<sup>5</sup> When asked whether MUD service to Palisades constituted orderly development of the natural gas infrastructure, Mr. Keep responded, "With Stonecrest."<sup>6</sup>

With respect to the impact on ratepayers, Mr. Keep testified that MUD ratepayers would benefit if MUD serves Stonecrest and Palisades as MUD would be able to spread its fixed costs over more ratepayers and that the inverse would be true if Aquila were to serve the developments. Therefore, he believed that the impact on ratepayers was neutral. However, when asked whether circumstances existed in which that would not be the case, Mr. Keep stated, "If you would take away Stonecrest and say Stonecrest was not going right now and Palisades was a separate project, I think that portion of the criteria would favor Aquila."<sup>7</sup>

The parties have stipulated that service by either Aquila or MUD to Palisades would be economically feasible and non-discriminatory.

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<sup>4</sup> P-0009 Transcript (164:23-165:25, 166: 4-13). Ms. Dolezal indicated the proposed changes to the system design in pink on Exhibit 70.

<sup>5</sup> P-0009 Transcript (118:5-8).

<sup>6</sup> Id. at (139:12-16).

<sup>7</sup> Id. at (134:5-9).

## O P I N I O N      A N D      F I N D I N G S

"It is the starting point for most challenges regarding whether a proposed or existing main extension meets the public interest criteria."<sup>8</sup>

In determining whether or not an extension or enlargement is in the public interest, the Commission considers the following criteria:

- 1) The economic feasibility of the extension or enlargement;
- 2) The impact the enlargement will have on the existing and future natural gas ratepayers of the metropolitan utilities district or the investor-owned natural gas utility;
- 3) Whether the extension or enlargement contributes to the orderly development of natural gas utility infrastructure;
- 4) Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and
- 5) Whether the extension or enlargement is applied in a nondiscriminatory manner.

Neb. Rev. Stat. § 57-1303 and § 57-1305.

Because the parties have stipulated that service by either would be economically feasible and nondiscriminatory, these factors are not at issue.

Furthermore, because Palisades is not within the city limits or extraterritorial zoning jurisdiction of the city of La Vista, none of the rebuttable presumptions regarding the public interest outlined in Neb. Rev. Stat. § 57-1304 are present.

**Impact on Ratepayers**

It is important to note that the impact of service by a particular provider on ratepayers is not limited to economics, but is broader in nature including but not limited to such concerns as public safety.

As stated previously, MUD argued that allowing it to serve Palisades and Stonecrest would allow MUD to spread its fixed

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<sup>8</sup> Application No. P-0005 Order at 6.

cost over more ratepayers thereby reducing costs. The same is true for Aquila ratepayers should Aquila be permitted to serve both developments. However, MUD conceded that without Stonecrest, the impact on ratepayers would indicate that it is in the public interest for Aquila to serve Palisades.

Aquila relied heavily on the potential confusion and delay in emergency response to gas main leaks in circumstances in which parallel main exist. In P-0008, we found that although this public safety issue is of concern with respect to the impact on ratepayers, due to the proximity of existing and pending mains along Giles Road, the addition of MUD service to Stonecrest would not appear to exacerbate this problem. However, with respect to Palisades, the potential for parallel mains along 168th Street and the fact that Aquila has such a significant presence in the area surrounding the development would increase the likelihood of such confusion and possible delayed response.

Based upon the evidence provided, the Commission finds that the impact on ratepayers indicates that it is not in the public interest for MUD to provide service to Palisades.

### **Orderly Development of Natural Gas Infrastructure**

"[T]he orderly development requirement is not limited to scrutiny of whether a particular extension would be part of orderly growth of a particular natural gas utility; rather, the legislature requires consideration of orderly development of natural gas utility infrastructure as a whole."<sup>9</sup>

Aquila has significant infrastructure in place in close proximity to the subdivision on at least three of its boundaries. By its own admission, MUD's belief that service to Palisades is orderly development is contingent on MUD providing service to Stonecrest. In an attempt to avoid duplication of mains along 168th Street, MUD is also proposing to serve Palisades through a larger diameter main through Stonecrest, which is a design that deviates from standard practices and would seem to be inconsistent with orderly development and contradict their expressed desire to have duplicate points of service in order to provide reliability in the event of a main break.

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<sup>9</sup> Application No. P-0005 Order at 9.

Based upon the evidence above, the Commission finds that MUD's service to Palisades will not contribute to the orderly development of the Natural Gas Infrastructure.

### **Duplicative or Redundant Natural Gas Infrastructure**

In prior orders, the Commission has explained that "redundant" means "exceeding what is necessary or normal: superfluous."<sup>10</sup>

As previously stated, Aquila has significant infrastructure in place capable of serving Palisades. If MUD were to proceed with its original design to install additional gas mains along 168th<sup>h</sup> Street south of Giles, such mains would directly parallel and duplicate existing Aquila infrastructure.<sup>11</sup> MUD has proposed an alternative to serving the Palisades development by increasing the main serving Stonecrest. However, it would appear that if MUD wishes to provide multiple points of service to promote reliability, duplication of Aquila's infrastructure to some extent is inevitable. The Commission recognizes that designs may require adjustments during a project. However, in the present case, the Commission finds that the alternative proposal does not eliminate concerns regarding duplication.

The Commission finds that MUD's service will result in duplicative or redundant natural gas utility infrastructure.

### **Conclusion**

MUD has relied heavily on the fact that the developer wants MUD to provide the natural gas service to the subdivision. As the Commission has previously determined in P-0005, developer choice, although taken into consideration, is not determinative.

However, in the present case, the factors taken together do not support a finding that service by MUD to Palisades is in the public interest. The Commission finds that service by Aquila to Palisades is in the public interest.

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<sup>10</sup> Application No. P-0003 Order at 9; Application No. P-0006 Order at 20.

<sup>11</sup> See Exhibit 70.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission MUD's proposed natural gas main extensions to serve the planned Palisades subdivision are not in the public interest.

IT IS FURTHER ORDERED that that Aquila's proposed gas main extensions to serve the planned Palisades subdivision are in the public interest.

IT IS FINALLY ORDERED that MUD must cease and desist extension of the proposed natural gas mains into the planned Palisades subdivision.

MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of February, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Deputy Director